

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

A.S.No.1025 of 2007

N.Balakrishnan

... Appellant/Plaintiff

Vs

1.N.Balasubramanian
2.N.Vijayan
3.G.Shanthi
4.P.Subendira
5.G.Subramanian
6.K.Rathinasamy

... Respondents/Defendants

This appeal is filed under Section 96 of CPC against the judgment and decree dated 27.09.2005 made in I.A.No.7 of 2004 in O.S.No.4 of 2004 on the file of the District Judge, Nagapattinam.

For Appellant : Mr.R.Murugesan
For Respondents : Mr.M.Rajasekaran
1 to 3 & 6

J U D G E M E N T

The plaintiff/petitioner who has filed an application in I.A.No.7 of 2004 for passing of final decree has preferred this appeal against the final decree passed on 27.09.2005.

2. It is not in dispute that the suit O.S.No.4 of 2004 was originally filed in the year 1998 as O.S.No.217 of 1998 on the file of the Principal Sub-Court Nagapattinam. The learned Subordinate Judge had decreed the suit granting 1/3 share to the plaintiff. As against the same, an appeal was preferred by the defendants 1 and 2 in the suit.

3. The District Court, Nagapattinam, partly allowed the appeal granting $\frac{1}{4}$ share each to the plaintiff and defendants 1 to 3. The defendants 4,5 and 6 are the tenants of agricultural land. Pursuant to the said preliminary decree passed in A.S.No.162 of 2000 by the Principal District Judge, Nagapattinam, the plaintiff has filed I.A.No.1/2002 before the

Sub Court Nagapattinam. The said application was transferred to the District Court, in view of the amendment introduced by the Tamil Nadu Civil Courts Act 1 of 2004.

4. The Commissioner filed a report and suggestions. It also appears from the records that the Commissioner had taken the assistance of Assistant Executive Engineer PWD to value the construction made in some of the suit properties. A report and plan were filed by the Commissioner. The plaintiff as well as defendants have filed their objections to the said report filed by the Commissioner.

5. The learned District Judge, Nagapattinam upon a consideration of the facts had accepted the report of the Commissioner and allotted the properties as suggested in the said report.

6. Aggrieved by the said allotment, the plaintiff has filed the above appeal.

7. I have heard Mr.R.Murugesan, learned counsel appearing for the appellant and Mr.M.Rajasekar, learned counsel appearing for the contesting respondents namely, respondents 1 to 3 and 6. The respondents 4 and 5 has not been served. It is seen from the records that respondents 4 and 5 are tenants of the agricultural land and they have remained exparte before the Trial Court. Hence, notice to respondents 4 and 5 is dispensed with under Order 41 Rule 14(1) C.P.C.

8. The following point arises for determination in this appeal.

1)Whether the Trial Court was right in rejecting the objection to the report of the Commissioner and making allotment as per the report of the Advocate Commissioner?

9. It should be pointed out that though parties have filed objections to the Commissioner's report, none of them have chosen to let in evidence as to how the report of the Commissioner is incorrect.

10. It is claimed by the learned counsel appearing for the appellant that some of the properties are having lesser extent than what has been mentioned in the plaint as well as in the report filed by the Commissioner.

11. I have perused the records. It is seen from the records that after the appointment of Commissioner and after filing his

report, the plaintiff/appellant filed an application in I.A.No.185 of 2004 for appointment of a new commissioner with a direction to take assistance of a Civil Engineer to ascertain the value of the buildings constructed in the suit properties. In the interlocutory application, namely in I.A.No.185 of 2004 in O.S.No.4 of 2004, it appears that an order was passed to the effect that the same Advocate Commissioner is directed to value the property after taking assistance of the Assistant Executive Engineer, PWD.

12. Accordingly, the learned Commissioner had taken the assistance of the Assistant Executive Engineer, PWD and filed a report. After the final report was filed, it appears that the plaintiff has filed objections contending that he should be allotted the properties that were allotted to the 1st defendant. 2nd defendant has filed an objection stating that after cyclone, the value of the properties situate near the shore has gone down and the allotment should be made considering the said fact also. It is also claimed that since the agricultural lands were in possession of the tenants, the court may pass a direction for sale of the property to the tenants or 3rd parties and distribute the proceeds.

13. I have gone through the report of the Advocate Commissioner as well as the valuation arrived at by the Assistant Executive Engineer. Though the plaintiff would claim that there is a short fall in the extent of the properties as well as valuation has not been done properly, he had not chosen either to examine himself or any other person to substantiate his contention. I find from the report and the calculation regarding the valuation annexed to the said report that the Commissioner has taken into account the relevant factors and suggested the allotment, which has to be accepted by the learned District Judge.

14. Though the learned counsel appearing for the appellant disputed the allotment based on the commissioner report, he was unable to point out any illegality or irregularity in the allotment suggested by the Commissioner which has been accepted by the learned District Judge.

15. In my considered opinion a mere filing of objection would not be sufficient. The appellant has not substantiated the objection by any tangible legal evidence. In the absence of such evidence, I am not inclined to agree with the contention of the learned counsel for the appellant. I find no illegality or irregularity in the procedure adopted by the learned District Judge, Nagapattinam in the absence of any evidence to substantiate the objection.

16. In fine, the appeal is dismissed confirming the judgement and decree dated 27.09.2005 made in I.A.No.7 of 2004 in O.S.No.4 of 2004 on the file of the District Judge, Nagapattinam. However, considering the relationship between the parties, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The District Judge,
Nagapattinam.
2. The Principal Subordinate Judge,
Nagapattinam.

Copy to

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.Kadarkarai, Advocate, S.R.No.5017
+1cc to Mr.Raja sekhar, Advocate, S.R.No.4578

SAI (CO)
RS (17/02/2017)

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